TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2023-092

October 10, 2023

David A. Couch
Attorney at Law
1501 North University Avenue, Suite 219
Little Rock, Arkansas 72207

Dear Mr. Couch:

I am writing in response to your request, made under A.C.A. § 7-9-107, that I certify the popular name and ballot title for a proposed initiated act.

My decision to certify or reject a popular name and ballot title is unrelated to my view of the proposed measure's merits. I am not authorized to consider the measure's merits when considering certification.

1. Request. Under A.C.A. § 7-9-107, you have asked me to certify the following popular name and ballot title for a proposed initiated act:

Popular Name

An Act to Exempt Feminine Hygiene Products and Diapers from Sales and Use Tax

Ballot Title

> An act to exempt feminine hygiene products and children and adult diapers, including disposable diapers from sales and use tax effective January 1, 2025. Defining "feminine hygiene products" as tampons, panty liners, menstrual cups, sanitary napkins, and other similar tangible personal property designed for feminine hygiene in connection with the human menstrual cycle. Defining "diapers" as an absorbent garment worn by humans who are incapable of, or have difficulty, controlling their bladder or bowel movements.

2. Rules governing my review. In Attorney General Opinion 2023-084, issued in response to your previous request for review and certification, I articulated the rules and standards that govern this process. I rely on those same rules and standards here, and I incorporate that analysis into this opinion.

3. Application. Having reviewed the text of your proposed initiated act, as well as your proposed popular name and ballot title, I have concluded that your proposed popular name is not misleading.

It is therefore approved as submitted. With regard to the ballot title, I believe several minor changes are necessary to make the ballot title "more suitable and correct."[1] The following ballot title is substituted and certified to ensure that it clearly and accurately sets forth the purpose of the proposed initiated act:

Ballot Title

> An act to create a sales and use tax exemption, effective January 1, 2025, for feminine hygiene products and diapers for children and adults, including disposable diapers. The act defines "feminine hygiene products" as tampons, panty liners, menstrual cups, sanitary napkins, and other similar tangible personal property designed for feminine hygiene in connection with the human menstrual cycle. The act defines a "diaper" as an absorbent garment worn by humans who are incapable of, or have difficulty, controlling their bladder or bowel movements.

Although I have certified your popular name as submitted and your ballot title as substituted, I have identified several issues in the text of your proposed initiated act:

- **Streamline definitions.** In Attorney General Opinion 2023-084, I suggested that if your intention is for Arkansas to remain compliant with the Streamlined Sales and Use Tax Agreement, the definitions in your proposed initiated act should mirror those found in the Streamlined Agreement ("Streamlined Agreement").[2] Although the revised text of your proposed initiated act uses some of the Streamlined Agreement's language, you have not replicated the exact text.[3] But because the substance of your proposed initiated act complies with the Streamlined Agreement, there is no longer ambiguity about the measure's intent and, therefore, no basis to reject your submission or modify the ballot title in this regard.

- **Grammatical errors.** The text of your proposed measure contains two grammatical errors. First, the subdivision labeled "(A)" states, "Gross receipts or gross proceeds derived from the sale of a feminine hygiene products and diapers, children and adult, including disposable diapers." The article "a" should be removed from this sentence. Second, the subdivision labeled "(D)" should use a colon instead of a semicolon after "2023."

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[1] A.C.A. § 7-9-107(d)(1).

[2] As explained in that opinion, the Streamlined Agreement is a compact among states that "focuses on improving sales and use tax administration systems for all sellers and for all types of commerce…." Acts 2003, No. 1273, § 1(b). Arkansas is a full member of the Streamlined Agreement.

[3] The term "feminine hygiene products" is defined in the Streamlined Agreement as "tampons, panty liners, menstrual cups, sanitary napkins, and other similar tangible personal property designed for feminine hygiene in connection with the human menstrual cycle, but does not include 'grooming and hygiene products' as defined in this Agreement." Streamlined Agreement, Appendix C, Library of Definitions, Part II. Nowhere does your proposed initiated act mention "grooming and hygiene products," but it does take the Streamlined Agreement's definition of that term and specify that the items in that definition are not "feminine hygiene products."

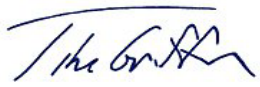
- **Improper numbering.** You have used letters to label the provisions that your proposed measure seeks to add to A.C.A. § 26-52-401, even though that statute uses numbers to list its exempt items. The next number that should appear alongside any new exemption in § 25-16-401's list is "(45)."[4] Your proposed initiated act should ideally use the same organization and numbering of the statute it seeks to amend, but this is not a reason to reject your submission.

As I explained in Attorney General Opinion 2023-084, A.C.A. § 7-9-107 does not authorize me to correct errors in the text of a proposed measure, only to substitute and certify a different popular name and ballot title. Because none of the deficiencies in your text are ambiguous or misleading, they are not grounds to reject your submission. But I have flagged them here in case you wish you to correct these errors and resubmit your popular name and ballot title with the revised text for my review and certification.

Under A.C.A. § 7-9-108, instructions to canvassers and signers must precede every petition, informing them of the privileges granted by the Arkansas Constitution and the associated penalties for violations. I have included a copy of the instructions that should be incorporated into your petition before circulation.

Senior Assistant Attorney General Kelly Summerside prepared this opinion, which I hereby approve.

Sincerely,



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[4] Acts 518 and 827 of 2023 both added new exemptions to A.C.A. § 26-52-401 that are labeled "(43)." After one of those is labeled "(44)" by the Arkansas Code Revision Commission, the next exemption added to the statute will be labeled "(45)."